



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 5336-99

4 October 1999

SGT. [REDACTED] USMC

[REDACTED]
[REDACTED]

Dear SSG [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 September 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 18 August 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. If you are correct that your contested fitness report was placed in your record without affording you a chance to review it, they found that this would be harmless error, since nothing in the report is "adverse." They noted that your contested report's ending date overlapped your uncontested report beginning 19 August 1997; however, they were unable to determine that the ending date of the report at issue was incorrect. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



5336-99

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
AUG 18 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
SERGEANT [REDACTED] USMC

Ref: (a) Sergeant [REDACTED] Form 149 of 6 Jun 99
(b) MCO P1610.7D w/Ch 1-3

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 August 1999 to consider Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970528 to 970822 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that she initially signed/sighted a "not observed" evaluation when she departed on temporary additional duty to a resident Professional Military Education (PME) Course. She was medically dropped from the course and returned to her parent command, with no "from TAD" (TD) report being submitted. The petitioner further states that the initial "to TAD" (TD) report was never forwarded and that the challenged document was prepared without her having an opportunity to view the completed evaluation. To support her appeal, the petitioner furnishes a copy of the initial "to TAD" report, along with her own statement and a copy of the chronological record (NAVMC 118(3)) from her Service Record Book (SRB).

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. The only official report for the period in question is the one contained in the petitioner's official Military Personnel File (OMPF). Prior versions which were never sent forwarded to this Headquarters have no validity or legal grounding.

b. It is obvious that the petitioner never executed an official TAD status (she was never joined for duty at the PME Course site). Therefore, submission of the "to TAD" report was correctly not accomplished. Regardless that the Reporting Senior

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authored a "not observed" evaluation in connection with the petitioner's departure on TAD, the report under consideration is a valid observed appraisal documenting performance for close to 90 days. As such, it is in complete agreement with the provisions of reference (b).

c. The Board is not convinced or otherwise persuaded that the petitioner had no knowledge of the submission of the report at issue. Her signature/date in Item 22 would tend to prove otherwise. Nevertheless, we find absolutely no indication that the report is anything other than an honest, objective, and accurate assessment of the petitioners performance during this finite period.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
[REDACTED]
[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps